IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Smt. Champa vs. State of Rajasthan & Ors.
(S.B.C. Writ Petition No. 3956/02)

Date of Order :- 15th December, 2006

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.P.P.Choudhary, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advocate.

BY THE COURT :

REPORTABLE

This writ petition has been filed by the petitioner with the prayer that the respondents be directed to provide notional promotion to her late husband who was working with them on the post of Inspector(Land Records), Naib Tehsildar and Tehsildar from the date junior persons to him were allowed promotions against the vacancies of the year in which he was entitled to promotion with all consequential benefits.

Factual matrix of the case is that the late husband of the petitioner was dismissed from service by order dated 25.7.1969. He challenged the aforesaid order before this Court in S.B.Civil Writ Petition No. 135/88. The said writ petition was originally filed against

the order of suspension. During the pendency of the writ petition however late husband of the petitioner Shri Sohan Raj Surana was dismissed from service therefore the petition was allowed to be amended. Soon thereafter, the original petitioner unfortunately expired. This Court while deciding the writ petition noted the fact that he was kept under suspension for about 20 years so much so that by the time the order of dismissal was passed, he had already retired from service on attaining the age of superannuation. The respondent therefore took an unreasonably long period in completion of the disciplinary proceedings. This Court on consideration of the argument of the petitioner in that case ultimately found the order of dismissal unsustainable in law and therefore quashed and set aside the same with the directions to the respondents to pay half of the arrears of salary to the widow of the deceased-petitioner from the date of his suspension upto the date of his superannuation on 31.7.1988 after deducting salary already paid to the deceased. The respondents were further directed to pay full arrears of salary and pension to the widow of the deceased from the date of superannuation of the deceased uptil the decision of the aforesaid judgment and continue to pay such pension during her lifetime.

The petitioner has filed this writ petition with the prayer that the order of dismissal of her husband having been declared illegal by the aforesaid judgment of this Court, her husband would be deemed to have continued in service till he retired on attaining the age of superannuation. He should therefore be held entitled to consideration for promotion on the post of Inspector(Land Records), Naib Tehsildar and Tehsildar and pay arrears of such posts on promotion with effect from the date such promotion was gratned to his juniors .

The writ petition has been contested by the respondent who have argued that the prayers made in the present writ petition are barred by the principles of constructive res judicata as the relief which the petitioner has now claimed could have been prayed for in the earlier writ petition as well. Even otherwise, the petitioner had prayed for consequential benefits in the earlier writ petition and when this Court did not deem it appropriate to grant any consequential benefit, the relief for consideration of the case of late husband of the petitioner for promotion should be deemed to have been denied. It has been argued that subsequent to the decision in the earlier writ petition, the petitioner had also filed a review petition for claiming the same relief but this Court vide order dated

13.8.1997 passed in S.B.Civil Review Petition No.62/97 declined to grant those reliefs. The relief so prayed having thus been expressly declined, the present writ petition would be even otherwise barred on the principles of res judicata. Further objection that has been taken is that the petition suffers from delay and latches inasmuch as the cause of action for promotion to late husband of the petitioner arose way back in the year 1962 whereas writ petition has been filed in the year 2002 . The writ petition is therefore liable to be dismissed on this count alone. As regards the delay in making payment of the arrears of salary and family pension to the petitioner, it is submitted that earlier judgment passed by the single bench could not be timely complied with because the respondents had preferred special appeal before the Division Bench of this Court and thereafter special leave to petition before Hon'ble Supreme Court. All due payments were made soon after the dismissal of S.L.P. It has therefore been prayed that the writ petition be dismissed.

On careful perusal of the judgment passed by this Court on 30th April, 1997 in the earlier writ petition, it becomes clear that originally when the writ petition was filed, the petitioner had challenged the order of suspension dated 25.7.1969 and

subsequently when during pendency thereof he was dismissed, he also impugned the validity of the dismissal order dated 25.7.1989 by amending the writ petition. When the services of the petitioner had been dismissed, there was no occasion for him to have prayed for a direction to the respondents to consider his case for promotion. It is a sad commentary on the working of the respondents that late husband of the petitioner was suspended from government service on 25.7.1969 and eventually was dismissed exactly two decades thereafter on 25.7.1989 upon being found guilty of the charges framed against him in the departmental enquiry. Unfortunately, the petitioner expired during the pendency of the writ petition. This Court in those circumstances while quashing the order of dismissal held his widow(the petitioner herein) entitled to arrears of half the salary of the deceased-petitioner after deducting the amount of subsistence allowance and the amount of family pension including its arrears. The argument raised by the respondent that the present writ petition would be barred by principles of constructive res judicata cannot be accepted. This argument is therefore rejected being devoid of any merit.

Coming now to the argument of res judicata on the ground that a review petition was filed claiming the same relief

which the petitioner has prayed for in the present writ petition and was dismissed, it would be appropriate to reproduce the prayers made in the present writ petition which are as follows:-

> "(1) The respondents may kindly be directed to provide notional promotions to husband of the petitioner on the posts of Inspector(Land Records), Naib Tehsildar and Tehsildar; from the date persons junior to husband of the petitioner were allowed promotions, against the vacancies of the year in which he was entitled to promotion, with all consequential benefits and reliefs, as if same were never denied to husband of the petitioner;
> (2) Further, the respondents may kindly be directed to fix salary of husband of the petitioner in the revised pay scales for the posts in question, allowing increments etc. in accordance with law, with all consequential benefits and reliefs;
> (3)The respondents may kindly be directed to make payment of interest @ 12% on the delayed payment of arrears, as directed by this Hon'ble Court vide judgment dated 30th April, 1997;
> (4) The costs of this writ petition may kindly be awarded in favour of the petitioner.
> (5) Any other writ, order or direction which your Lordship may deem just and proper in the facts and circumstances of the case, may also kindly be issued in favour of the petitioner.

The respondents have produced on record a certified copy of the review petition alongwith its order. It would be evident from the review petition that the following reliefs were prayed for by the petitioner therein:-

> "(i) Relief No. 1.- the respondents may kindly be directed to make payment of half of the salary to the widow of the deceased petitioner Smt. Champa with effect from 25/7/69 fro a period of six months and immediately thereafter i.e. after the expiry of six months till 31/7/88 i.e. the date of superannuation, she may be granted the pay @ ¾ of the pay as revised from time to time alongwith the increments etc. after deducting the salary already paid to the deceased petitioner as the subsistance allowance.
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> Relief No.2: the respondents may kindly be directed to make payment of arrears of gratuity and pension of the deceased petitioner w.e.f. 31/7/88 (date of superannuation) till 12/4/94 i.e. the date of his death and thereafter with effect from 12/4/94 to pay full arrears of family pension to the widow of the deceased petitioner uptil the decision of this Hon'ble Court and continue to pay her the family pension in full till her lifetime in accordance with the relevant service rules applicable to the deceased petitioner."

On comparison of the prayers clauses in both the writ petition and the review petition, it would be evident that petitioner had not claimed those reliefs even in review petition prayer of which has been made in the present petition and therefore on matter of fact also the contention raised by the respondents are completely unfounded. Argument of res judicata is also therefore rejected.

The only objection that now remains is that of delay in filing of the present writ petition. It can be seen from the facts the present case that so long as the order of dismissal of the petitioner was not annulled, no claim for relief which has been prayed for in

the present writ petition could possibly have been made. Even though this Court by order dated 30.7.1997 directed the respondents to pay to the petitioner arrears of half the salary as also family pension to her but the respondents have made all these payments enormously delayed on 6th September, 2001 nearly after four years of the date of the aforesaid judgment. The present writ petition has been filed by the petitioner about a year thereafter on 30th September, 2002. This delay cannot be accepted so unreasonably and inordinate as to completely deny the petitioner of the due entitlements of her late husband although the equities can be balanced by denying the interest on the arrears which are ultimately found payable to her. Once a coordinate bench of this Court has found the dismissal order of the late husband of the petitioner as illegal and such judgment has been upheld not only by a Division Bench of this Court but also even by the Hon'ble Supreme Court, the judgment has to be given complete effect to and the petitioner cannot be deprived of the legitimate entitlements that flow from the spirit of the said judgment. When dismissal order of late husband of the petitioner has been quashed and set aside, as a logical corollary thereto, he would be deemed to have been continued in service till he superannuated and therefore obviously he would certainly have a right of consideration for promotion

regardless of the fact that he had actually not served the respondents.

In view of what has been discussed above, the present writ petition deserves to be allowed and is accordingly allowed. The respondents are directed to consider the case of the late husband of the petitioner for promotion on the post of Inspector(Land Records), Naib Tehsildar, Tehsildar, in that order, from stage to stage, from the dates on which the person(s) immediately junior to him were promoted and if adjudged suitable, grant the consequential benefits of such promotions to her widow. She would also be entitled to the benefit of revision of pay scale from time to time upto the date of superannuation of her husband on 31.7.1988 and accordingly all the retiral benefits and family pension shall also be liable to be revised. In view of the directions contained in earlier judgment of this Court however the petitioner shall be entitled to only half the arrears of salary. Compliance of this judgment be made within a period of four months from the date of service of the copy of this judgment.

(MOHAMMAD RAFIQ),J.